

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JENNIFER WILKS-WRIGHT

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C SECTION 1692Brief description of cause:
Fair Debt Collection Practices Act**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/05/2012

/s/ Craig Thor Kimmel

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

| | | |
|-----------------------------|---|--------------|
| JENNIFER WILKS-WRIGHT. | : | |
| | : | |
| v. | : | CIVIL ACTION |
| | : | |
| NCO FINANCIAL SYSTEMS, INC. | : | NO. |
| | : | |

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

11/05/2012
Date

Craig Thor Kimmel
Attorney-at-law

Plaintiff, Jennifer Wilks-Wright
Attorney for

215-540-8888
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.Address of Plaintiff: 220 South Big Stone Beach Drive, Milford, DE 19963Address of Defendant: 507 Prudential Road, Horsham, PA 19044Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) 15 U.S.C. § 1692

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 11/05/2012/s/ Craig Thor Kimmel
Attorney-at-Law57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.**I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.**DATE: 11/05/2012/s/ Craig Thor Kimmel
Attorney-at-Law57100

Attorney I.D.#

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

JENNIFER WILKS-WRIGHT,)
)
 Plaintiff)
) **Case No.:**
 v.)
) **COMPLAINT AND DEMAND FOR**
) **JURY TRIAL**
 NCO FINANCIAL SYSTEMS, INC.,)
)
 Defendant) **(Unlawful Debt Collection Practices)**

COMPLAINT

JENNIFER WILKS-WRIGHT (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC., (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. §1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant's corporate headquarters is in the Commonwealth of Pennsylvania; therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. §1391(b)(1).

PARTIES

5. Plaintiff is a natural person residing in Milford, Delaware 19963.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. In the alternative, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road, Horsham, Pennsylvania 19044.

9. Defendant collects, and attempts to collect, consumer debts incurred, or alleged to have been incurred, for personal, family or household purposes on behalf of creditors and debt buyers using the U.S. Mail, telephone and/or internet.

10. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

11. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

12. At all relevant times, Defendant was attempting to collect an alleged consumer debt.

13. Upon information and belief, the alleged debt, a credit card account, arose out of transactions, which were primarily for personal, family, or household purposes.

14. Plaintiff never incurred any debts in connection with a business or commercial activities and, therefore, the alleged debt, if truly an obligation owed by her, could have only arisen from a financial obligation for primarily personal, family or household purposes.

1 15. Beginning in or around November 2011, and continuing through February 2012,
2 Defendant repeatedly and continuously called Plaintiff on her home telephone in its attempts to
3 collect a consumer debt.

4 16. During the relevant period, Defendant called Plaintiff, on average, two (2) times
5 a day, sometimes calling as frequently as three (3) times a day.

6 17. Upon information and belief, Defendant called Plaintiff on a continuous and
7 repetitive basis with the intent of harassing Plaintiff into paying a debt.

8 18. In addition to the quantity of collection calls, Defendant engaged in an
9 intentional course of action calculated to call at precisely 9:00 p.m., presumably to signal
10 Plaintiff that the call originated from a source other than a debt collector. Upon information and
11 belief, this conduct was a form of harassment and/or deception, and by virtue of Defendant's
12 use of sophisticated computers that determine when calls are made, will be revealed in the
13 course of discovery.

14 19. Defendant's calls to Plaintiff were at times when it was inconvenient for Plaintiff
15 to receive collection calls.

16 20. To stop the calls, Plaintiff often answered the telephone and hang-up. Defendant
17 would immediately call back, and it is alleged, did so with the intent to annoy, abuse, and harass
18 Plaintiff.

19 21. In its attempts to collect this debt, Defendant placed automated, pre-recorded
20 voicemail messages on Plaintiff's home answering machine stating, "This is NCO Financial
21 calling for Jennifer Wilks-Wright, please call us back at (888) 289-0907" (*or words to that*
22 *effect*).
23
24
25

1 22. It was upsetting for Plaintiff to receive voicemail messages on her answering
2 machine, as her husband overheard the collection messages and conversations about the calls
3 often resulted, causing marital discord and disagreement unnecessarily.

4 23. Defendant's call patterns and call strategies were intended to harass, and were
5 persistently engaged in, even after Plaintiff hung up the phone after calls were received, and by
6 virtue of calls being placed at precisely 9:00 p.m.

7 24. Finally, within five (5) days of its initial communication with Plaintiff,
8 Defendant failed to send Plaintiff written notification of her rights to dispute the debt and/or
9 request verification of the debt, as well as providing her with the name of the creditor and the
10 amount of the debt.
11

12 25. To date, Defendant has not sent Plaintiff anything in writing regarding the
13 alleged debt.

14 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

15 **COUNT I**

16 26. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C.
17 §1692c(a)(1).

- 18 a. A debt collector violates §1692c(a)(1) of the FDCPA by communicating
19 with a consumer in connection with the collection of any debt at any
20 unusual time or place or a time or place known or which should be known
21 to be inconvenient to the consumer. In absence of knowledge of
22 circumstances to the contrary, a debt collector shall assume that the
23 convenient time for communicating with a consumer is after 8:00 a.m.
24 and before 9:00 p.m., local time at the consumer's location.
25

- 1 b. Here, Defendant violated §1692c(a)(1) of the FDCPA when it contacted
2 Plaintiff at 9:00 p.m. and the calls/messages continued past 9:00 p.m.

3 **COUNT II**

4 27. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C.
5 §§1692d and 1692d(5).

- 6 a. Section 1692d of the FDCPA prohibits a debt collector from engaging in
7 conduct the natural consequence of which is to harass, oppress, or abuse
8 any person in connection with the collection of a debt.

- 9 b. Section 1692d(5) of the FDCPA prohibits debt collectors from causing a
10 telephone to ring or engaging any person in telephone conversation
11 repeatedly or continuously with the intent to annoy, abuse, or harass any
12 person at the called number.

- 13 c. Here, Defendant violated §§1692d and 1692d(5) of the FDCPA when it
14 called Plaintiff multiple times a day and on numerous days a week, in its
15 attempts to collect a debt, with the intent to annoy, abuse and harass
16 Plaintiff.

- 17 d. Also, Defendant violated §1692d of the FDCA by calling Plaintiff back
18 after she hung-up the phone as well as leaving debt collection messages
19 on her home answering causing her to suffer marital discord and
20 disagreement.
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COUNT III

28. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §1692g(a).

- a. A debt collector violates §1692g(a) of the FDCPA by failing to send to the consumer, within five days after its initial communication with a consumer in connection with the collection of a debt, a written notice containing: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.
- b. Here, Defendant violated §1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt or providing her with the name of the original creditor and the amount of the debt.

1 WHEREFORE, Plaintiff, JENNIFER WILKS-WRIGHT, respectfully prays for a
2 judgment as follows:

- 3 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
4 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
5 15 U.S.C. § 1692k(a)(2)(A);
6 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
7 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
8 d. Any other relief deemed appropriate by this Honorable Court.

9 **DEMAND FOR JURY TRIAL**

10 PLEASE TAKE NOTICE that Plaintiff, JENNIFER WILKS-WRIGHT, demands a jury
11 trial in this case.

12 RESPECTFULLY SUBMITTED,

13 DATED: 11/05/2012

14 KIMMEL & SILVERMAN, P.C.

15 By: /s/ Craig Thor Kimmel
16 Craig Thor Kimmel
17 Attorney ID # 57100
18 Kimmel & Silverman, P.C.
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25